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THE OHIO COMPANY OF VIRGINIA*

1748-1798

I.

No subject involving legislation or litigation has more constantly enlisted the attention or taxed the accumulated lore of the legal profession in Kentucky than that relating to land titles and the disposition of the land by the Commonwealth or those claiming under it. The law of land titles, in this jurisdiction, cannot well be mastered without some knowledge of their genesis and history; and a study of such history is quite as fascinating and instructive in its way as an excursion into the intricacies of the feudal system.

It is commonly supposed and, for the most part, is true that all titles to land in Kentucky owe their original derivation either to the Commonwealth of Kentucky or to the Commonwealth of Virginia. But this is not universally true either as to warrants, surveys or patents. Prior to the Revolution of 1776, many warrants for lands, in virtue of so-called "Orders in Council" or of military services rendered by the recipient, were granted by the Royal Governor of Virginia in pursuance of authority emanating directly or indirectly from the crown of Great Britain. Numerous surveys, in the years 1772, 1773, 1774, 1775, 1776, and even later, were made in Augusta, Botetourt, or Fincastle county (embracing all of Kentucky), in conformity with such warrants, and, in the month of December, 1773, at least two grants, for 2,000 acres each, based upon such surveys, were made of lands located at or near the falls or rapids of the Ohio river (now Louisville). These two grants issued by royal authority, in the name of "George the Third, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith," &c., and not, of course, in the name of the Commonwealth of Virginia, which was not established until the month of June, 1776. The "Commonwealth Land Office" of Virginia was not created by statute or opened for business until after the month of May, in the year 1779.

It cannot fail to be cause for wonder that the actual surveying and patenting of the lands south of the Ohio river, claimed by Virginia, were so long delayed. Prior to the Rev-

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olution, Virginia claimed all of the Ohio Valley between the Alleghany mountains and the main watershed of the Mississippi, and extending from the vicinity of Fort Pitt, at the junction of the Alleghany and Monongahela rivers, to the confluence of the Ohio with the Mississippi. Between these two widely separated landmarks, to the north and south, lay the "Monongahela Country," the "Kanawha Country," and the "Kentucky Country." Over all three, Virginia not only claimed but attempted to assert and exercise sovereign jurisdiction. Long before Daniel Boone and his associates penetrated the interior of Kentucky, that region was an object of covetous longing not only on the part of veterans of the French and Indian War, to whom land bounties had been promised by Governor Dinwiddie, of Virginia, in his proclamation of February 19, 1754, and whose rights had been confirmed by the King's proclamation of October 7, 1763, but also on the part of large land companies originating in Pennsylvania or Virginia. It is just beginning to be realized what an important influence was exerted by these land companies—the "chartered companies," as they have been called, in accelerating the "westward movement" and in feeding the discontent which culminated in the American Revolution. They unquestionably played a leading part in the "winning of the west," and, as James H. Perkins, author of "Annals of the West," long ago observed,¹ "No full history of the West can be written until the facts relative to the great land companies are better known." This remark had particular reference to the "Old Ohio Company," of which we are now writing.

In certain important respects, these land companies differed from the landholding companies of later times, and, in a sense, marked the transition from the strictly "Proprietary" type of land-grant, exemplified in colonies such as Maryland and Pennsylvania, which, as John Fiske says, "were like hereditary monarchies," to the grant for settlement or speculation, issued in exchange for a purely monetary consideration and without other conditions, examples of which, both remote and recent, are varied and abundant. English colonization in America, under supervision of the British government, was not exclusively a political or governmental movement, but in its in-

¹ North American Review, July, 1839.

ception was largely, if not predominantly, a commercial enterprise. The settlement of the Old Dominion by immigrants from Britain was committed, in the first instance, to the Virginia Company of London. It was, primarily, a "company" enterprise. But to such "charter company" was entrusted not merely the direction of the fiscal, economic, and industrial affairs of the colony, but also the management of its internal police and the administration within defined limits of its local civil government. The Virginia Company, the precursor and prototype of all that followed, was projected on a grand scale, and from first to last passed through many vicissitudes and suffered many radical changes, but the feature which chiefly characterized it, to-wit, the union of commercial with governmental functions, was a feature which not a few of the leading land companies down to the dawn of the American Revolution sought to adopt or imitate.

After the Virginia Company of London passed out of existence and the Crown resumed direct control over the Colony of Virginia, there were numerous large grants of land, notably the grant in 1649 of the Northern Neck, between the Rappahannock and Potomac rivers, by Charles the Second, then an exile in France, to Lord Hopton and associates, which was confirmed to Lord Culpepper and his heirs by King James II, in 1688. This principality subsequently passed, by inheritance, into the hands of the Fairfax family, but it was essentially a "proprietary" establishment, carved out of and overlapping the "crown lands," of Old Virginia. The two Van Meter grants of June 17, 1730, and of October 21, 1731, for 30,000 acres each, the Hite and Mackay grant for 100,000 acres (all of which conflicted with the Fairfax grant), the Beverly grant of 1736, for 118,491 acres, and the Borden grants of 1734 and 1739, for a total of 600,000 acres, in the Shenandoah Valley of Virginia, were instances of grants of large tracts, which did not carry with them the exercise of any political or governmental powers. The basic consideration for such grants was the payment of a monetary equivalent and the assumption of an obligation to locate a specified number of settlers or families within the bounds of the grant within a stipulated time. The Colony of Georgia, founded in 1732, began its career under the auspices of a "chartered company" fashioned somewhat after the model of the old Vir-

ginia Company of London; but twenty years later (1752) Georgia was re-constituted as a Royal Province

As has been pointed out by Mr. Fairfax Harrison, in his able and illuminating monograph on "Virginia Land Grants," it was from the beginning a fixed policy of the colonial administration of Virginia to foster and reward military service and in so doing to strengthen the defenses of the advancing frontier by allotting lands on the outskirts of the Colony to adventurers who had served and by experience and training were qualified further to serve the common weal as soldiers. Military service was a "public service" and invariably commanded its price in the form of a donation of land.

It is not practicable, in this connection, to pursue the subject exhaustively or in detail, for our immediate concern is with but one of the important land companies of the colonial era. The "Ohio Company," as it was called, or "The Ohio Land Company of Virginia," as it may here be called for greater certainty, was projected in 1747-48 by Thomas Lee, "a member of His Majesty's Council and one of the Judges of the Supreme Court of Judicature of His Majesty's Colony of Virginia." In his youth, Thomas Lee had been the resident agent of the Fairfax estate in Virginia, and was one of the Virginia Commissioners at the Treaty of Lancaster, Pennsylvania, in June, 1744. At the time of his death, in 1750, he was the Acting Governor of Virginia. He was a grandson of that Richard Lee, who was the founder of the famous Lee Family of Virginia. Associated with Thomas Lee in the Ohio Company enterprise were John Hanbury, a London merchant, and Colonel Thomas Cresap, Colonel William Thornton, William Nimmo, Daniel Cresap, John Carlisle, Lawrence Washington, Augustine Washington, George Fairfax, Jacob Giles, Nathaniel Chapman and James Wardrop, "all of His Majesty's Colony of Virginia, and others, their Associates." The membership of the Company changed in the course of time and besides those previously named later included Capel Hanbury, a merchant of London, John Tayloe, Presley Thornton, Ahtur Dobbs, Samuel Smith, Robert Dinwiddie, Richard Lee, Philip Ludwell Lee, John Mercer, James Scott, Robert Carter, George Mason, the Executors of Thomas Lee, the Executors of Lawrence Washington, Gawin Corbin, and others. The Cresaps, Wardrop, Giles,

and Smith were of the Province of Maryland. The others, with the exception of the London merchants, were of the Colony of Virginia. Their petition solicited a grant to them of a tract of 500,000 acres of land on the south side of the River Allegheny, "otherwise the Ohio," or "in such parts of the west of the said mountains as shall be adjudged most proper by the petitioners" for the purpose of "settling the countrys upon the Ohio and extending the British Trade beyond the mountains on the western confines of Virginia." The concession was sought "on condition of the petitioners, seating at their proper expense a hundred Familys upon the lands in seven years."² This petition ran the usual gauntlet through the Privy Council and the Lords Commissioners for Trade and Plantations, with the result that, on March 18, 1749, the British Board of Trade reported favorably on the application and forthwith instructed the Governor of Virginia to pass the grant. A grant in due course was made on July 12, 1749. It seems the original instruction was to pass a grant of 200,000 acres, but before it could be confirmed, other petitions had been presented to the Privy Council, and the first instruction was referred back to the Board, where the grant was increased to 500,000 acres.³ Another explanation of the increase in acreage is that the initial grant was for 200,000 acres, coupled with the proviso that, upon compliance with the conditions thereto annexed, the company should become entitled to a pre-emptive right to 300,000 acres of additional adjoining land.⁴ It was contemplated that locations of the Company's lands might be made, at pleasure, on either side of the Ohio between the mouth of the Monongahela and the mouth of the Kentucky rivers. On some of the earlier Colonial Maps (e. g. Lewis Evans, 1755) it is to be noted that the country south as well as that north of the Ohio river bore the name "Ohio." At the period in question, in other words, "Ohio" was understood to include "Kentucky."

The activities of the Ohio Company under this grant, coincident with the territorial aggressions of Virginia, precipi-

² *The Ohio River*, by Archer Butler Hulbert, pp. 20-21.

³ See entries in Board of Trade *Journal*, pp. 56, 57, under dates of December 9, 1748, and February 14, and February 21, 1749; cited by Oliver Morton Dickerson, in *American Colonial Government*, 1696-1765, pp. 329-330, footnote 773.

⁴ *Christopher Gist's Journals*, by W. M. Darlington.

tated the French and Indian War of 1754-1763, for it was a challenge to the claims of France in the Ohio Valley. Of this Ohio Company, Marshall says, "its objects were commercial as well as territorial."⁵ Its plans for the occupation and settlement of the "waste lands" irritated and alarmed the Indians, while its trading projects clashed with the rival interests of the Pennsylvanians as well as of the French of the Lakes and the Upper Ohio.

"Since 1675," says Fiske, "the general supervision of the colonies had been in the hands of a standing committee of the Privy Council, styled the 'Lords of the Committee of Trade and Plantations,' and familiarly known as the 'Lords of Trade.' To this board the governors sent frequent and full reports of the proceedings in the colonial legislatures, of the state of agriculture and trade, of the revenues of the colonies, and of the way in which the public money was spent. In private letters, too, the governors poured forth their complaints into the ears of the Lords of Trade, and these complaints were many and loud."⁶ From the earliest decades of the eighteenth century down to the outbreak of formal war with France in 1756, the British Board of Trade actively encouraged westward expansion, and was thoroughly committed to the policy of rapidly filling up the back country and pushing settlements across the mountains into the Ohio Valley. The object of expansion westward was to defend the settlements nearer the coast from the attacks of the French and their Indian allies, and so to occupy the back country that such dangers should be pushed farther and farther away. Hence, in the case of Virginia, western settlements strengthened the English position.

Contemporaneously with the grant to the Ohio Company was one to the "Loyal Land Company," composed of John Lewis, Thomas Walker, and others, by an order of the Governor and Council of July 12, 1749, whereby leave was granted them to "take up and survey 800,000 acres of land in one or more surveys beginning on the bounds between this Colony (Virginia) and North Carolina, and running to the westward, and to the north, so as to include the said quantity." Also, by an order of the Governor and Council, bearing date October 29,

⁵ *Life of Washington*, Vol. 1, p. 375.

⁶ *American Revolution*, Vol. 1, pp. 1-2.

1751, leave was granted to the "Greenbrier Company," composed of Mr. Speaker, John Robinson, Thomas Nelson, and others, to "take up 100,000 acres of land, lying on Greenbrier river, northwest and west of the Cowpasture and Newfoundland."'

Further illustrating the liberal policy of the British and Colonial authorities on the subject of western land grants during the first half of the eighteenth century, see a list of 34 Orders in Council for similar frontier grants, made between 1745 and 1753, published in the *Virginia Magazine of History and Biography*, Vol. V, pp. 173, 241.

It was in harmony with this settled policy that Governor Dinwiddie issued his bounty lands proclamation of February 19, 1754, heretofore mentioned.⁸ His opinion of the practice was expressed in these words:

"The granting of large quantities to one person has been of service in settling the back and remote parts of this Dominion, as these great grants have been subdivided to poor people that come from the other colonies and are not able to be at the charge of coming here (i. e. to Williamsburg) and taking out grants for small quantities of land."

The craving for land, whether by the capitalistic and aristocratic element or by adventurous home-seekers and "landless resolute," in no wise abated but, nevertheless, as a by-product of the contest between France and England for the control of the Mississippi Valley (along with Canada), the attitude and policy of the home government with respect to Western lands underwent a radical change. The King's Proclamation of October 7, 1763, which followed close upon the heels of a formal cessation of hostilities between France and England, marked an entire reversal of form. By that proclamation, His Royal Highness sought to arrest the steady flow of population westward, and even went so far as to attempt to recall actual settlers who had passed the crest of the mountains separating the Atlantic slopes from the drainage basin of the Ohio and Mississippi. There appear to have been two main considera-

¹For useful information concerning the "Loyal Land Company" and "Greenbrier Company," see "Case of the Loyal and Greenbrier Companies," 4 Call (Va.) 21-32, decided by the Court of Appeals of Virginia, May 2, 1783; and *Hamilton v. Maze*, 4 Call (Va.) 196-213, decided in June, 1791.

²Hening's Stats. of Va., Vol. VI, p. 417.

³Dinwiddie Papers, Vol. I, p. 371.

tions or motives for this change of attitude, viz., (1) a desire to conciliate rather than to combat and subjugate the Indians, and (2) a purpose to withhold western lands from settlement in the interest of large investors and royal favorites. Exceptions of a limited nature were made in favor of those who had rendered military service during the French and Indian War, but for a long time these were almost nugatory in practical operation because of the reluctant and grudging compliance of the King's representatives in Virginia. Largely by the efforts of one man, Colonel George Washington, were his comrades of the Old French War eventually enabled to realize the bounties promised them by Governor Dinwiddie and nominally confirmed by the King.

In the same year that the Royal Proclamation, forbidding the colonization of British America beyond the heads of Atlantic Coast rivers, was promulgated (1763), George Washington, Arthur Lee, Warner Lewis, Francis Thornton, and their associates in Virginia and Maryland, undertook to organize the "Mississippi Company" as a "charter company" to control the Mississippi River and the mouth of the Ohio. It was an ambitious project but little or nothing seems to have come of it. In December, 1768, they petitioned the King for a grant of two and a half million acres of land, but their request was uncere- moniously filed away, as the Ministry was then resisting the importunate overtures of the group seeking the *Walpole* or *Vandalia* grant.¹⁰

Fur-traders and other merchants who had lost heavily in Pontiac's War, of 1763, sought to recoup their losses through land speculation, and out of this grew the co-called "Indiana Company." By an agreement collateral or subsidiary to the Treaty of Fort Stanwix, signed on November 5, 1768, provision was made for a grant in favor of the said "Indiana Company," to establish a colony south of the Ohio, to control the upper waters of that stream. The reservation in favor of this company was mainly the work of Major William Trent, acting in behalf of himself and twenty-two other traders (one of whom was Captain Evan Shelby, of Maryland, the father of Governor Isaac Shelby, and the grant was taken in the name of the

¹⁰ *History of West Virginia*, by Virgil A. Lewis, pp. 103-104.

King as trustee for the sufferers of the Pontiac War, to whom the land was to be made over as a kind of "retribution" or "restitution" for their losses.

The Fort Stanwix Treaty, which aimed to oust the Indian title or color of title to the entire Ohio Valley, was likewise the signal for fresh activities on the part of other groups who designed to acquire and colonize lands in the Middle West, and at this time it was that the movement for what came to be known as the *Walpole* or *Vandalia* grant was inaugurated. The Franklins, father and son, with Thomas Wharton and others, were particularly active in promoting the schemes of the *Wharton* or *Walpole* enterprise. It broadened in scope, as time went on, and sought to merge with the *Indiana* and *Illinois* projects and to absorb the *Ohio Company of Virginia*, and to figure thenceforward as the "Grand Ohio Company." From the very outset it encountered determined and prolonged opposition but, mainly through the efficient management of Benjamin Franklin, finally triumphed over its opponents, led by Lord Hillsborough, and, on August 11, 1772, the British Board of Trade reported to the Privy Council in favor of the Vandalia-Indiana Grant in return for a money payment equivalent to "the whole of the money paid by Government for all the lands purchased of the Six Nations at Fort Stanwix." This report was approved by the King and, on May 6, 1773, Lord Dartmouth (who had succeeded Hillsborough) and others signed the report in accordance with the King's Order in Council of August 14, 1772, outlining the system of government and boundaries for the new Colony of Vandalia. By the last clause of the report, it was provided that the sufferers of the Pontiac War should have the "Indiana Grant" confirmed to them with the boundaries defined at Fort Stanwix, in 1768. Parenthetically, it may be stated that this "Indiana" tract was located in what is now West Virginia and bears no relation whatever to the present State of Indiana. An order of the Privy Council, of October 28, 1773, finally consummated the grant of "Vandalia" to the Walpole Company.

The outbreak of the Revolutionary War halted the proceedings of those concerned in the establishment of the "Colony of Vandalia" and the inauguration of the "new government" planned for it. In fact, the activities of all the huge Land

Companies were brought to a complete standstill by the pendency of the war; and at the close of that war, the promoters had to reckon, not with the Mother Country, by which the grants had been authorized, but with the new independent Commonwealths, particularly Virginia, the ruling classes of which had ideas of their own as to whether and how far these vast concessions should be recognized.

In his pamphlet entitled "*Public Good*: being an examination into the claim of Virginia to the Vacant West Territory, and of the right of the United States to the same: To which is added Proposals for Laying off a New State, to be Applied as a Fund for Carrying on the War, or Redeeming the National Debt," which was published in Philadelphia, at the end of the year 1780, Thomas Paine, the renowned author of "*Common Sense*," succinctly expressed his somewhat heretical views respecting the Land Question as follows:

"I have already remarked that only the United States, and not any particular state, can lay off new states and incorporate them into the Union by representation; keeping, therefore, this idea in view, I ask, might not a substantial fund be quickly created by laying off a new state, so as to contain between twenty and thirty millions of acres, and opening a land office in all countries in Europe for hard money, and in this country for supplies in kind, at a certain price?

"The tract of land that seems best adapted to answer this purpose is contained between the Alleghany mountains and the river Ohio, as far north as the Pennsylvania line, thence extending down the said river to the falls thereof, thence due south into the latitude of the North Carolina line, and thence east to the Alleghany mountains aforesaid. I more readily mention this tract, because it is fighting the enemy with their own weapons, as it includes the same ground on which a new colony would have been erected, for the emolument of the crown of England, as appears by the letters of Lords Hillsborough and Dartmouth, had not the revolution prevented its being carried into effect."

The "new colony" here mentioned by Paine has reference, of course, to the "Vandalia" Colony to be established by the Walpole Company, pursuant to the royal grant approved in 1773.

Virgil A. Lewis, in his "History of West Virginia,"¹¹ makes the following statement, in line with the observation just quoted from Paine's "*Public Good*:"

"The Revolution put an end to all these negotiations, and had it not been so, it is probable that there would have been an independent government in what is now West Virginia more than a century before it came."

¹¹ Page 79.

The words "more than a century" would more accurately have read "more than three-quarters of a century."

The most vigorous and inveterate opponent of the claims and pretensions of these ante-Revolutionary Land Companies in Virginia was the illustrious and uncompromising Democrat of the Old School, George Mason, of Gunston Hall. In the end, they all, with scarcely an exception, went by the board, but not all solely upon the ground that they were regarded as unauthorized or invalid, but, in several instances, rather for the more decisive reason that death had claimed the more forceful members and their successors did not have and could not muster sufficient "working capital" with which to perfect, develop and market their claims. During the progress of the Revolution and afterwards, it was the obvious interest of the other Confederated Colonies to circumscribe, so far as possible, the territory claimed by Virginia, and, to this end, the overtures presented from time to time to the Continental Congress by agents of the various large Land Companies were treated with more or less professed favor. But this was done, as it appears, rather as a means to extort concessions from Virginia than with any serious purpose ever to legalize the status of the importunate petitioners. The Virginia statesmen resisted to the uttermost the encroachments threatened by these companies to her imperial domain, but after all, she submitted to a dismemberment of her territory through the Cession of the Northwest Territory, of which Jefferson was the leading and, perhaps, the most influential advocate. Out of this, in the years immediately following the Revolution, were carved by Congress the "Western Reserve," to the use of Connecticut; the Marietta grant to the "Ohio Company of Associates," composed almost exclusively of New England veterans of the Revolution; the Symmes Purchase for his company of Jerseymen, between the two Miamis, and the so-called Scioto grant. Thus, in new forms, and with changed personnel, the older companies reappeared to appropriate the virgin western lands of the Old Dominion. Thus, in hot haste, the emancipated colonies made up for the time that had been lost in consequence of the dilatory and obstructive policy of Britain and the prevalence of war and rumors of war during the forty years from 1744 to 1784.

All of this lavish disposition of the public lands, however, was not accomplished without complaint and resistance on the part of many adventurous but impecunious pioneers.¹²

The claims of the "Loyal Company" and the "Greenbrier Company," as has been seen,¹³ were not denied or extinguished by operation of law, but, so far as Kentucky is concerned, their victory in the courts was a barren victory. From the language of its grant, it would seem clear that the Loyal Company had good ground for claiming a prior right to survey lands in Kentucky, but in consequence of its protracted and exhausting struggle for existence, it seems to have become impotent and helpless, and beyond the explorations conducted by Doctor Thomas Walker in its behalf in the spring of 1750, it has not been discovered that the Loyal Company ever pursued its design of taking up Kentucky lands by actual survey carried into grant. Its operations, like those of the Greenbrier Company, were confined chiefly to lands in what is now West Virginia, with a considerable number of tracts in Powell's Valley, in Southwest Virginia. Following the decree in "The Case of the Loyal and Greenbrier Companies," Dr. Thomas Walker, as agent for the Loyal Company, returned to the Virginia Land Office 973 surveys, "all made and certified according to the requisitions of the decree;" which surveys, it is said, contained "less than 300,000 acres," scattered over a territory embracing more than 5,000,000 acres. In passing, it may be stated that Dr. Thomas Walker served as agent of the Loyal Company from about 1749-50 until about the year 1793. He was succeeded by Francis Preston; he by George Conway; he by Francis Smith; he by William Nelson, who served until 1829, when he was succeeded by T. W. Gilmer, who was the agent until 1834, or later.¹⁴

¹² For examples of petitions and protests against the "engrossing" of lands by "monopolising" companies, see Petition No. 8, in "Petitions of the Early Inhabitants of Kentucky," by Prof. J. A. Robertson, Filson Club Pub. No. 27, dated about 1778, and Dr. Thomas Walker's comment thereon in a letter dated July 9, 1778, to Col. William Preston ("Preston and Virginia Papers," p. 122, Wisconsin Historical Publications, Calendar Series, Vol. I.) and, also, the "Petition of Kentuckians for Lands North of Ohio River," from the Papers of the Continental Congress, No. 48, 235, 247, published in "Ohio in the Time of the Confederation," by A. B. Hulbert, at pp. 137-144. This last was presented in 1785-1786.

¹³ 4 Call 21, and 4 Call 196.

¹⁴ For a full history of the Loyal Company and its successor, called "The Successors of the Loyal Land Company," which was incorporated

In the case of *French v. Successors of the Loyal Company*,¹⁵ the Court of Appeals held that, "The entries in council, and the surveys made thereon by the Company, were not equivalent to a grant from the Commonwealth. . . . Until a patent issued, it was not property; for no one had an exclusive right to it, which is of the essence of property." This fatal weakness in the titles of the Loyal Company (as of all land companies on the same footing) was again pointed out by the court, in *Cline's Heirs v. Catron*,¹⁶ where it is said:

"Cline (who claimed under the Loyal Company) had a clear equitable right to the land in controversy; . . . But, in *French v. Loyal Company*, 5 Leigh 627, this court held that such rights were upon no higher footing than rights acquired by entry and survey under a land office treasury warrant, and that in both cases, until patented, the lands were waste and unappropriated, and liable to location by others."

In the French case, *supra*, Tucker, Presiding Justice of the Virginia Court of Appeals, gave this clear and concise explanation of the course necessary to be taken by the claimant in order to acquire a good legal title from the Commonwealth. Said he:

"A warrant, entry, and survey, like contracts to sell and convey, give but an equitable right. The warrant is the first step towards procuring a grant; but before an entry with the surveyor, there is not even an incipient right to any particular parcel of land; the entry is the first legal step towards the acquisition of title to any specific tract. The survey is the next progressive legal step towards the acquisition; but it is the grant only which confers the legal title. The warrant, entry, and survey authorize the proprietor to demand the grant; but do not, in themselves, confer it. Until it is consummated by the grant, he has an equity. The legal title remains, therefore, in the Commonwealth until the emanation of the patent shall have passed it to her grantee."

The untoward fate of the "Ohio Company of Virginia" resembled that of the two sister companies, whose uncertain fortunes we have been retracing. Certainly its legal status would seem to have been as sound and unassailable as that of the Loyal and Greenbrier Companies; but, with its strength sapped and its resources consumed in the long and futile effort

by an act of Virginia of February 25, 1818, see, in addition to the cases in 4 Call, previously cited, the cases of *Ross v. Keewood*, 2 Munford 141; *French v. The Successors of The Loyal Company*, 5 Leigh 627-685, decided July, 1834, and *Cline's Heirs v. Catron*, 22 Grattan, 378-395, decided in June, 1872.

¹⁵ Note 14, *supra*.

¹⁶ Note 14, *supra*.

to gain a firm foothold in the country bordering upon the Ohio, it seems to have succumbed to the processes of dissolution as inevitably as the physical body of man yields to disease and death.

Because of the fact that, of all the "chartered" Land Companies we have mentioned, the Ohio Company of Virginia was the eldest and, therefore, the accepted pattern for those that followed in its wake, and also because of the further fact that it made, as will be shown, a somewhat deeper material impress upon Kentucky than any of its contemporaries and rivals, not even excepting the Loyal Land Company, which is chiefly known to us through the explorations of its agent, Dr. Walker, it has been thought worth while to contribute this supplement to a most interesting chapter in the colonial and pioneer history of the Commonwealth.

The enterprise of the men who were instrumental in creating and promoting the Ohio Company of Virginia is verified by substantial evidence of their earnestness of purpose and their daring and determined operations during the earlier years of the company's existence. In preparation for compliance with the terms of their grant, the Company, in 1750, ordered goods to the value of 4,000 pounds from London, and built a small storehouse at Wills' Creek, on the Potomac. This first storehouse built by the Company was located on the west side of Wills' Creek, north of the river, in Maryland, but, in 1752, the Company having concluded to make Wills' Creek a permanent trading post, proceeded, with that object in view, to erect another storehouse and magazine, which became known throughout the country as the "New Storehouse." The "New Storehouse" was located on the Virginia or south side of the river, opposite the mouth of "Caicutuck" or Wills' Creek, on land purchased from Lord Fairfax, in what was then Frederick County, Virginia, but afterwards Hampshire, and now Mineral County, West Virginia. It stood, says Loudermilk, writing in 1878,¹⁷ "at the foot of the bluff on which now stands the beautiful residence of Captain Roger Perry, very near the point occupied by the abutment of the Potomac bridge." It was constructed of logs and was of sufficient dimensions not only to contain the merchandise of the company, but to afford a home for its agents,

¹⁷ "History of Cumberland," Md., pp. 26-33.

as well as a place of retreat and defense, in case of a hostile demonstration on the part of unfriendly Indians, which event was liable to occur at any hour. This point was regarded as a very favorable one for the future operations of the company, since Indians were numerous and the furs obtained here were of excellent quality, great variety, and satisfactorily abundant.

After the completion of the "New Storehouse," under the direction of Hugh Parker, a factor of the Company, a number of trappers were engaged who could be relied upon to defend the post in case of savage hostility, as well as to hunt and trap for their employers. The Company seems to have regarded Wills' Creek as a part of their grant, or, at least, within its exterior boundaries, as loosely defined in the royal edict of 1749, and they evidently expected it to become an important point as the westward movement developed. The ground was surveyed on both sides of Wills' Creek and laid off into a town, with streets, lanes, &c., the squares being subdivided into lots. The name of Charlottesburg was given it, in honor of Princess Charlotte Sophia, afterwards wife of King George III. A map of this town was amongst the papers of the Ohio Company, but has long since disappeared. It is probable that the patent to the town site was taken out in the name of George Mason, in trust for the Ohio Company.

On the opposite or Maryland side of the river, Fort Cumberland was erected in 1754-55, on the site of the present town of Cumberland, a well-known landmark on the Old National Road.

In the year 1750, the Company employed Christopher Gist, a native of Maryland but then living on the Yadkin, in North Carolina, to make an exploration of the Western country in which its operations were eventually to be conducted and its holdings located, and directed Gist to report the result of his observations with respect to the lands he found and other related matters. Captain Gist was a surveyor, as his father, Richard Gist, had been before him. He was "a man of excellent character, energetic, fearless and a thorough woodsman." For his arduous service he was to receive one hundred and fifty pounds sterling, "and such further handsome allowance as his

services should deserve."¹⁸ Gist's instructions, dated September 11, 1750, were brief but comprehensive. In particular, he was told—

"When you find a large quantity of good, level land, such as you think will suit the company, you are to measure the breadth of it, in three or four different places, and take the courses of the river and mountains on which it binds in order to judge the quantity. You are to fix the beginning and bounds in such a manner that they may be easily found again by your description;" etc.

Under this employment, Gist made two explorations for the Ohio Company, the first in the Ohio and Kentucky country, and the second in the Monongahela or West Virginia region. It was on his first journey (1750-51) that he encountered Colonel George Croghan, who, in 1749, had negotiated with the Indians for a tract of some 200,000 acres in the Forks of the Ohio River, and with Croghan, Gist traveled to Pickawillany (the "Twigtwee" or Miami town, on the west side of the Big Miami and the south side of Laramie's Creek, at its mouth, and about two and a half miles north of the present town of Piqua, Ohio). Thence Gist continued his tour alone by way of the Scioto River and the Kentucky country back to Virginia. His most noted exploit was accompanying Major George Washington as his guide, in the autumn and winter of 1753-54, to the French forts in Northwest Pennsylvania. Under the auspices of the Ohio Company, he enlisted settlers for lands supposed to be within their grant, at a point now known as Mount Braddock, in Fayette County, Pennsylvania, where Gist established a fort and garrison in accordance with the charter engagements of the Company. This was long known as "Gist's" or "Gist's New Settlement." In a "Directory of the Monongahela and Youghiogheny Valleys," for the year 1859¹⁹ is an account of Uniontown (originally Beesontown), the county seat of Fayette County, where reference is made to the three principal stations on the road between Uniontown and Connells-ville, one of which was Mount Braddock, concerning which the following passage occurs:

"The second named station, Mount Braddock, is a place of great historical interest; not only as the point at which Christopher Gist, in 1752, made the first white settlement west of the Allegheny mountains

¹⁸ Hulbert's *Historic Highways of America*, Vol. 6, and Boone's *Wilderness Road*, pp. 69-70.

¹⁹ Pages 71-72.

but also for the stirring scenes which transpired in and around it, and the noted actors in them. Indian, French, American and English actors, in wild confusion, flit across the stage. Nemacolin, the aged Delaware chieftain, blazing the path down which should come pouring the exterminators of his race. Washington, the boy ambassador to the French post; Captain Wm. Trent marching to found 'the fort at the point;' Ensign Edward Ward retreating from his lost stockade. Again Washington, the Lieutenant-Colonel of twenty-one, entrenching himself against the coming French and Indian foe. Le Grand Villiers and 700 French and Indian troops gliding to the surprise of the Virginia forces. Braddock, the confident English General, marching with his solid columns to defeat. Washington, again, the buckskin Colonel-Aide, sick and enfeebled, hurrying up from the rear to his post beside his doomed commander. Washington, yet again, exhausted with the labors and cares of the lost battle, groping his way through the forest, 'mid the darkness of the night, with a message from the dying Braddock to the tardy Dunbar. Then the gathered remnants of the beaten host, bearing the dying Braddock in his sash, amid the forest gloom. These, and scores of lesser rank, crossed and re-crossed the scenes around Mount Braddock, rendering it now classic ground.

With his sons, Nathaniel and Thomas, Christopher Gist was with Braddock on his fatal expedition, and after Braddock's defeat, he raised a company of scouts in Virginia and Maryland and did service on the frontier, being then first called Captain Gist. In 1756, he went to the Carolinas to enlist Cherokee Indians for the English service. For a time he served as Deputy Indian Agent of the Southern Department. He died in the summer of 1759, of small-pox, in South Carolina or Georgia. His wife's maiden name was Sarah Howard. His daughter, Violette, married William Cromwell; another daughter, Anne, was never married, but lived with her brother, Thomas Gist, at Mount Braddock, Pa., where he died in 1786, and she administered upon his estate. Of the sons of Captain Christopher Gist, Richard Gist was killed in the battle of King's Mountain, on October 7, 1780; Thomas Gist died at Mount Braddock, as above stated; and Nathaniel Gist, the eldest son, who was a soldier in the Revolution, served with good effect on the borders of North Carolina, and attained the rank of Colonel in the Virginia Continental line, married Judith Cary Bell, and, in the spring of 1793 removed with his family to Kentucky, where he died at his home "Canewood," on the borders of Bourbon and Clark Counties, early in the nineteenth century. His widow afterwards married General Charles Scott, Governor of Kentucky. He left two sons, Henry Clay and Thomas Cecil Gist. His eldest daughter, Sarah, married Judge Jesse Bledsoe, and one of their daughters married Mason

Brown, of Frankfort. His second daughter married Col. Nathaniel G. S. Hart, a brother of Mrs. Henry Clay, who fell a victim of Indiana fury at the battle of the River Raisin. The third daughter married Doctor Joseph Boswell, of Lexington, and one of their daughters was the first wife of Gov. Luke P. Blackburn. Doctor Boswell was the maternal grandfather of General Joseph Orville Shelby, of the Confederate Army. The fourth daughter married Francis P. Blair, Sr., and they were the parents of Montgomery Blair, of Maryland, and Francis P. Blair, Jr., of Missouri. The fifth daughter married Benjamin Gratz, of Lexington, whose second wife, Anna Boswell Shelby, widow of Orville Shelby, was a niece of his first wife. One daughter of Colonel Gist, Davidella, died unmarried. Francis P. Blair, Jr., grandson of Nathaniel Gist, was Democratic nominee for Vice President in 1868, and B. Gratz Brown, a great-grandson of Col. Gist, was the Independent Republican and Democratic nominee for Vice President in 1872. Many descendants of Captain Christopher Gist, the pioneer surveyor and explorer, are still to be found in Kentucky, Missouri and other states of the Middle West.

In addition to the post and storehouse at the mouth of Wills' Creek, the Ohio Company, as early as 1752, had built a storehouse called the "Hangard," at the mouth of Redstone Creek, in what is now Fayette County, Pennsylvania. It was long popularly known as "Redstone Old Fort," because of the remains of mound-building Indians to be seen at this point. Upon this site, in 1785, the town of Brownsville was established by legislative act, and for many years it continued to be an important starting-point for Western immigration.²⁰

Colonel Thomas Cresap, a Yorkshireman, who came to Maryland at an early age, was an active member of the Ohio Company, and, assisted by the Delaware Indian, Nemacolin, he blazed the first path west to the Ohio, in 1752. This trail was long known as "Nemacolin's Path."²¹ Later it came to be known as "Washington's Road," and still later as "Braddock's Road." Michael Cresap, the well-known borderer and Indian fighter, was a son of Colonel Thomas Cresap.²²

²⁰ Thwaites, *Early Western Travels*, Vol. III, p. 158, footnote 23.

²¹ Hulbert's *Historic Highways*, Vol. 3, pp. 95-96.

²² Thwaites, *Early Western Travels*, Vol. I, p. 95, footnote 56.

Captain William Trent (born in Lancaster, Pennsylvania, in 1715), was a brother-in-law of Colonel George Croghan, and for a time his partner in trade. Trent was a noted Indian trader and, in 1753, he was sent out by Governor Dinwiddie for the Ohio Company to begin a fortification at the Forks of the Ohio (now Pittsburg.) The French, under Contrecoeur, expelled the garrison in the middle of April, 1754, the surrender being made by Ensign (afterwards Major) Edward Ward, a capable subaltern who had been left in command with an insufficient force. For this Major Edward Ward, twenty years later (July, 1774), surveys of military lands were made by James Douglas within a few miles of Lexington, on the head of South Elkhorn and Jessamine Creeks, in what is now Jessamine County.²³ Edward Ward was a brother-in-law of William Trent and George Croghan, and was associated with them in their business as Indian traders.²⁴

Andrew Montour, son of a noted French half-breed, who was an expert interpreter and woodsman, was also at one time in the employ of the Ohio Company. George Washington, both for family and business reasons, at all times took a lively interest in its affairs, and his friend, Colonel William Crawford, was for a time employed as its surveyor.

Early in the history of the Ohio Company it was realized that it would be useless to expect much progress in their enterprise unless effective measures were adopted to win the good will of the Ohio Valley Indians, and the Company petitioned the government of Virginia to invite them to a treaty. Accordingly, the Treaty of Log's Town, about seventeen and a half miles below the Forks of the Ohio, on the north or west side of the river, in what is now Pennsylvania, but then thought to be a part of the District of West Augusta, in Virginia, took place on June 13, 1752. Colonel Joshua Fry and two other Commissioners were present as representatives of Virginia and Christopher Gist attended as an agent on the part of the Ohio Company. By this treaty, the Indians who took part agreed not to molest any settlements that might be made on the southeast side of the Ohio. Governor Dinwiddie always contended

²³ Thwaites, *Early Western Travels*, Vol. I, p. 56, footnote 19, and Hulbert's *Historic Highways*, Vol. III, p. 115.

²⁴ *West Virginia Historical Magazine*, Vol. IV, No. 4, pp. 278-283.

that the two treaties of Lancaster (1744) and of Logstown (1752) had effectually extinguished the Indian title to lands east and south of the Ohio in favor of Virginia.

The subsequent history of the enterprise may be summarized in the following extracts from a note on "The Ohio Company," by Jared Sparks.²⁵

"Soon after the treaty at Logstown," says Sparks, "Mr. Gist was appointed the company's surveyor, and instructed to lay off a town and fort at Shurtrees (Chartier) Creek, a little below the present site of Pittsburg, and on the east side of the Ohio. The company assessed on themselves four hundred pounds towards constructing the fort. In the mean time, Mr. Gist had fixed his residence on the other side of the Alleghenies, in the valley of the Monongahela, and induced eleven families to settle around him on lands, which it was presumed would be within the company's grant. The goods had come over from England, but had never been taken farther into the interior than Wills' Creek, where they were sold to traders and Indians, who received them at that post. Some progress had been made in constructing a road to the Monongahela, but the temper of the Indians was such as to discourage an attempt to send the goods at the company's risk to a more remote point.

"Things were in this state, when the troubles on the frontiers broke out between the French and English, involving on one side or the other the various Indian tribes. All further operations were suspended till towards the close of the war, when hostilities had nearly ceased on the Virginia frontier from the capture of Fort Duquesne and the weakened efforts of the French. In 1760, a state of the company's case was drawn up by Mr. John Mercer, secretary to the board, and forwarded to Mr. Charlton Palmer, a solicitor in London, who was employed by the company to apply to the King for such further orders and instructions to the government in Virginia as might enable the company to carry their grant into execution. The business was kept in a state of suspense for three years, when the company resolved to send out an agent, with full powers to bring it as speedily as possible to a close. Colonel George Mercer (a son of John Mercer, formerly secretary of the company and author of "Mercer's Abridgement of the Laws of Virginia"), was selected for this commission, and instructed to procure leave for the company to take up their lands, according to the conditions of the original grant, or to obtain a reimbursement of the money which had been paid on the faith of that grant.

"He repaired to London accordingly and entered upon his charge. But at this time the counteracting interests of private individuals in Virginia, the claims of the officers and soldiers under Dinwiddie's proclamation, which extended to lands within the Ohio company's grant, and, moreover, the schemes and application of the proprietors of *Walpole's Grant*, were obstacles not to be overcome. Colonel Mercer remained six years in London, without making any apparent progress in the object of his mission, and at last he agreed to merge the interests of the Ohio company in those of Walpole's, or the *Grand Company*, as it was called, amounting to one thirty-sixth part of the whole. These terms were not approved by the members of the Ohio company in Virginia, nor was it clear that Colonel Mercer's instructions authorized him to conclude such an arrangement.

"While the subject was still in agitation, the Revolutionary War came on, and put an end, not only to the controversy but to the exist-

²⁵ "The Writings of Washington," Vol. II, appendix VI, pp. 478-483.

ence of the two companies. Thus the Ohio company was in action only about four years, having never in reality revived after its first check, at the commencement of hostilities with the French and Indians on the frontiers. All persons concerned were losers to a considerable amount, though at its outset the scheme promised important advantages both to individuals and to the country at large."

To this compendious summary, Sparks adds the statement that "The original records and papers of the Ohio Company are now (1833) in the possession of Mr. Charles Fenton Mercer, of Virginia, by whose politeness I have been favored with the use of them in drawing up this brief outline." Lowdermilk furnishes an additional trace of these important documents. He says:

"The papers of the Ohio company were in the possession of General Charles Fenton Mercer, who died at Howard, near Alexandria, in 1857. Every effort was made to trace the destiny of these papers, but it is altogether probable that they have been destroyed as the papers of General Mercer were consigned to the care of a distant relative at the time of his death, and during the war the house of this gentleman was occupied by troops. The papers were contained in chests, and when the troops took their departure, all the documents had disappeared, since which time no trace of them has been found."²⁸

The Librarian of The Historical Society of Pennsylvania, at Philadelphia, has lately informed the writer, however, that "among the Etting Papers acquired by the Society many years ago, there are two volumes of the papers of the Ohio Company, covering the period from 1753 to 1817." But these records relate chiefly to the Company's operations in Pennsylvania.

Before leaving this branch of the subject, it may be worth while to state that, about the year 1762, Washington "projected a chain of improvements by the route of the Potomac 'from Fort Cumberland, at Wills' Creek, to the Great Falls, (of the Potomac). This movement was a part of the scheme of the 'Ohio Company' formed for developing their large tracts of land in the west." At a meeting held in Frederick (Maryland), in May, 1762, some eleven gentlemen, of Virginia, and an equal number of gentlemen, of Maryland, including Captain Evan Shelby, the father of Governor Isaac Shelby, were elected managers and were authorized to receive subscriptions for stock in the "Potomac Company," an association designed to carry out the proposed improvements. Colonel George Mercer, of Virginia, and Colonel Thomas Prather, of Maryland, were

²⁸ History of Cumberland (1878), footnote to p. 31.

elected treasurers of the company. At the same time, the land about Fort Cumberland was laid off in town lots and sold at public auction. However, it seems that nothing was done towards improving the navigation of the Potomac until the close of the Revolutionary War, when the subject was resumed with vigor. This is said to have been "the first work of internal improvement in America."²⁷

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(To be continued.)

²⁷ Scharf's History of Maryland, Vol. II, pp. 518-519.